



Federal Communications Commission  
Washington, D.C. 20554

February 13, 2012

**DA 12-199**

*Via First-Class Mail and E-Mail*

Ms. Donna Epps, Vice President, Federal Regulatory Affairs  
Verizon  
1300 I Street, NW, Suite 400 West  
Washington, D.C. 20005

Re: Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25;  
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent  
Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593

Dear Ms. Epps:

By your letter of December 5, 2011,<sup>1</sup> Verizon requests highly confidential treatment for certain data that it filed with the Commission on that same day. Though Verizon did not follow the procedure implied in the *Second Protective Order* and used in this proceeding for obtaining such treatment, we grant Verizon's request in part and deny it to the extent that it seeks highly confidential treatment of public information.<sup>2</sup>

The *Second Protective Order* clearly states that only those categories of information specifically described in that Order are entitled to enhanced confidentiality, and therefore any information and data outside the scope of those categories are not protected.<sup>3</sup> However, when justified, we have broadened those categories when parties in this proceeding have made a

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<sup>1</sup> Letter from Donna Epps, Vice President Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, Dec. 5, 2011 (*Verizon Letter*).

<sup>2</sup> See *Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, 25 FCC Rcd 17725 (2010) (*Second Protective Order*); see also *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Rcd 6571 (2011) (*Supplement to the Second Protective Order*). We note that other parties to this proceeding included requests to expand the categories recognized by the *Second Protective Order*, including AT&T, CenturyLink and Fairpoint. See Letter from Christopher Heimann, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, Dec. 14, 2011; Letter from Jeffrey S. Lanning, Assistant Vice President, Federal Regulatory Affairs, CenturyLink to Marlene H. Dortch, Secretary, Federal Communications Commission, Dec. 5, 2011; Letter from Karen Brinkmann (for FairPoint) to Marlene H. Dortch, Secretary, Federal Communications Commission, Dec. 5, 2011. This letter incorporates all the requests for highly confidential treatment made in those letters, as well as two additional categories that are justified in light of requests for data and information made in the *Competition Data Request Public Notice*. See *Competition Data Request in Special Access NPRM*, Public Notice, 26 FCC Rcd 14000 (2011) (*Competition Data Request Public Notice*).

<sup>3</sup> See *Second Protective Order*, 25 FCC Rcd at para. 6.

written request for us to do so.<sup>4</sup> We strongly prefer that such written requests be made *prior* to submitting the information or data at issue.

Nonetheless, we grant Verizon's request to the extent that it seeks enhanced confidential treatment of non-public information. In your letter, you generally represent that the data for which you seek protection "contain some of Verizon's most commercially sensitive information, the disclosure of which would place Verizon at a significant competitive disadvantage."<sup>5</sup> You therefore request that we designate such data and information as Highly Confidential.

As stated in the *Second Protective Order*, consistent with past practice, the Commission will in this proceeding grant more limited access to those materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. We will permit persons submitting such documents and information to designate those materials as Highly Confidential and, as specified in the *Second Protective Order*, we will limit access to such materials to Outside Counsel of Record, their employees, and Outside Consultants and experts whom they retain to assist them in this proceeding. We find that such materials are useful in developing a more complete record on which to base the Commission's decision in this proceeding. We are mindful of the highly sensitive nature of the information, documents, and data described in Verizon's letter, but we must also protect the right of the public to participate in this proceeding in a meaningful way. We conclude that the protections adopted in the *Second Protective Order* give appropriate access to the public while protecting a Submitting Party's competitively sensitive information, and thereby will serve the public interest.

Though some of the categories of information described in your letter include public information, and therefore are not entitled to any confidential status, we agree that most of the information described qualifies as "Highly Confidential" under the Commission's protective orders issued in this proceeding.<sup>6</sup> Accordingly, to the extent that the information, data or

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<sup>4</sup> See *Supplement to the Second Protective Order*, *supra* note 2. This procedure is also consistent with Commission rules governing the confidentiality of trade secrets and commercial or financial information. See 47 C.F.R. § 0.457(d)(2) ("Unless the materials to be submitted are listed in paragraph (d)(1) of this section and the protection thereby afforded is adequate, any person who submits materials which he or she wishes withheld from public inspection under 5 U.S.C. §552(b)(4) must submit a request for non-disclosure pursuant to § 0.459.") Level 3 and Sprint noted that, based on a discussion with staff, the Bureau would confer Highly Confidential Status on *all* data submitted in response to the *Competition Data Request Public Notice*. Letter from Paul Margie (for Sprint) to Marlene H. Dortch, Secretary, Federal Communications Commission, Dec. 19, 2011; Letter from Erin Boone, Senior Corporate Counsel, Federal Regulatory Affairs, Level 3 Communications LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, Dec. 5, 2011. That assertion is not correct. No information or data in this docket are designated Highly Confidential unless the Bureau specifically states such *in writing*. Cf. *Second Protective Order*, 25 FCC Rcd at para. 3 ("We stress that this Second Protective Order covers only the specific data and information identified in paragraph 6 below that contain Highly Confidential Information.").

<sup>5</sup> *Verizon Letter* at 1.

<sup>6</sup> For example, we only extend enhanced confidential treatment to data and information that would not be available through a public source, such as public portions of a Price Cap Tariff Review Plan or summaries of *Contract-Based Tariffs*.

documents (or portions thereof) fall within the categories of information listed below *and* contain Highly Confidential Information, as defined in the *Second Protective Order*,<sup>7</sup> then such information and documents (or portions thereof) may be designated and submitted as “Highly Confidential” under the *Second Protective Order*.<sup>8</sup> To the extent that portions of the data or documents do not contain Highly Confidential Information, they are to be produced in unredacted format or submitted as “confidential” under the *Modified First Protective Order*,<sup>9</sup> as appropriate.

Categories Eligible for Highly Confidential Treatment:

Data, information, a document, or portion of a document that contains highly detailed or granular customer or geographic information regarding:

- A. Revenues, including disaggregated revenue information that is not otherwise publicly available, related to *DS1* and *DS3* services, including but not limited to revenues related to *One Month Term Only Rates*, *Term Discounts*, *Tariff Benefit Plans*, *Tariff Discount Plans*, *Contract-Based Tariffs*, *Prior Purchase-Based Discounts*, and other discounts;<sup>10</sup>
- B. Revenues related to *PSDS* service;<sup>11</sup>
- C. Data based on the Price Cap Tariff Review Plan (TRP), to the extent that the information is not present in the TRPs filed with the Commission;
- D. The number of subscribers (customers) and revenues associated with *Tariff Discount Plans*, per *Listed Statistical Area (LSA)*, information regarding the number of customers who failed to meet certain commitments related to a *Tariff Discount Plan*,

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<sup>7</sup> “Highly Confidential Information” means information contained in Stamped Highly Confidential Documents or derived there from that is not otherwise available from public sources and that the Submitting Party has kept strictly confidential, and that, the Submitting Party claims, constitutes some of its most sensitive business data which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. See *Second Protective Order* at paras. 2, 5.

<sup>8</sup> In addition to Verizon, all parties in this proceeding may submit data, information, a document, or a portion of a document that contain highly detailed or granular customer or geographic information regarding the categories of information listed in this letter and obtain enhanced confidential treatment. In other words, this letter adds the thirteen categories listed below to paragraph 6 of the *Second Protective Order*. See *id.* at para. 6.

<sup>9</sup> See *Special Access Rates for Price Cap Local Exchange Carriers*, Modified Protective Order, 25 FCC Rcd 15168 (2010) (*Modified First Protective Order*).

<sup>10</sup> Italicized terms are as defined in the *Competition Data Request Public Notice*, *supra*, note 2.

<sup>11</sup> *Id.*

- and the number of *DSIs* and *DS3s* purchased under *Tariff Discount Plans* by LSA, to the extent that the information is not present in publicly available tariffs;<sup>12</sup>
- E. The number of subscribers (customers) and revenues associated with *Contract-Based Tariffs*, by LSA, the identity of customers, and information regarding the number of customers who failed to meet certain commitments related to the *Contract-Based Tariff*;<sup>13</sup>
  - F. Pricing, to the extent such information is not publicly available, for *DSIs* and *DS3s* sold as unbundled network elements (UNEs) and as non-UNEs, as well as all *PSDS*, including circuit indentifying information and information concerning vendors;<sup>14</sup>
  - G. Circuits purchased, for *DSIs* and *DS3s* purchases from ILECs, including the total number of intrastate and interstate circuits purchased, the rates at which those circuits were purchased and the discount plans under which those circuits were purchased;<sup>15</sup>
  - H. Expenditures, including dollar volumes of purchases of intrastate and interstate *DSI* and *DS3* services, and expenditures under certain rate structures and discount plans;<sup>16</sup>
  - I. The specific identity of the parties which purchase *DSI* and *DS3* services under the terms and provisions of *Contract-Based Tariffs*;<sup>17</sup>
  - J. Request for Proposals (“RFPs”), including responses received to RFPs parties have issued;
  - K. Collocation, including wire center specific revenue information and number and names of *Collocators*;<sup>18</sup>
  - L. Descriptions of CLEC or out-of-region ILEC sales, pricing structures and discounts; and,

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

M. Information and data related to terms and conditions contained in a carrier's *Contract-Based Tariff*, *Tariff*, *Tariff Benefit Plan*, or *Tariff Discount Plan* that, whether alone or in combination with other confidential or non-confidential information, would reveal the identity of a customer, the services purchased by a customer, the geographic area in which such services were bought, or other information and data designated as Highly Confidential in the *Second Protective Order* or its amendments.<sup>19</sup>

Sincerely,

Sharon E. Gillett  
Chief, Wireline Competition Bureau

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<sup>19</sup> *Id.*; see also *Second Protective Order*, *supra* note 2; *Supplement to Second Protective Order*, *supra* note 2.